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SEP 19 2006

Serial No. 10/527,145

PATENT

REMARKSClaim Rejection Under 35 U.S.C. § 103

In light of this rejection, the subject matter of claim 1 has been amended to more particularly define the invention and distinguish it from the cited prior art. The subject matter of independent claims 7 and 8 have been deleted, and amendments have been made to the original dependent claims. Original claims 1-14 are cancelled in favor of new claims 15-22.

The primary application of the apparatus according to the present invention is for triangulation, as shown in and described with reference to Figure 1. The end of one tape is attached to a fixed point D0, the end of the second tape is attached to a second fixed point D1, the handle bearing the tape holders is drawn away from the two points by a predetermined amount on each tape, and the vertical position M2 of the device above the ground is given by the pendulum.

To this end, the essential features of the device are that: (i) the two tape holders are independently rotatable on the handle about a substantially common axis, so that by moving the handle back and forth and from side to side the lengths of tape extending from the tape holders are adjustable, (ii) the pendulum is connected to the handle by a universal joint, and (iii) the pendulum is a multi-part length-adjustable rod to allow for different heights of the points D0 and D1 above the ground. Claim 1 has been amended to more particularly specify this combination of features. None of the cited references, individually or in combination, disclose or suggest this combination of features.

Potter (U.S. Patent No. 6,223,446) discloses a device comprising two tape holders fixed at 90 degrees and having bubble levels to ensure that they are horizontal. The holders cannot rotate to enable triangulation, and there is no pendulum to indicate the ground position of the device. The Office suggests that the pendulum of Peters is an obvious alternative to the bubble levels of Potter. However, the bubble levels of Potter ensure that the tape holders remain strictly horizontal, and this is essential to Potter since it is an elevation checking device. A pendulum cannot determine whether a device is horizontal; merely that it is above a certain point on the ground. Thus, a pendulum is fundamentally different to a bubble level and serves a distinct

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function. Therefore, except with foreknowledge of the invention, it would not be obvious to provide Potter with a pendulum as suggested by the Office.

The Office further suggests that it would be obvious in view of Wopschall (U.S. Patent No. 3,760,766) to have the two tape holders of Potter pivot about the same axis, since Wopschall allegedly discloses using two tape measures for taking measurements simultaneously in different directions. However, Wopschall only discloses using the two tape measures for taking measurements at right angles on a chart. In Wopschall, the ability to rotate one tape measure relative to the other is provided solely to facilitate compact storage. Therefore, Wopschall does not disclose or suggest that the tape measures have any role in measuring in directions other than at right angles. Since the Potter disclosure is also concerned exclusively with measuring at right angles, i.e., elevation referenced to a horizontal plane, there is no reason, other than with foreknowledge of the present invention, that one would wish to combine Wopschall and Potter.

We respectfully urge the Office to look beyond the mechanical simplicity of the invention and recognize that the unique combination of features now claimed provides a new apparatus capable of a triangulation function not previously attainable with a single device.

In light of the foregoing, we submit that the claims are patentable distinguished over the cited art.

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CONCLUSION

The undersigned believes that all claims presented in the present application (claims 1-14 are cancelled and claims 15-22 are pending) are allowable over the cited prior art and respectfully requests the prompt issuance of a Notice of Allowance to this effect. Should the Examiner determine that any further action is necessary to place this application into better form, the Examiner is encouraged to telephone the undersigned representative at 919-420-1734.

Respectfully submitted,

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